

# Section 248

## Typical Procedural Steps



### **Introduction.**

[Section 248](#) is a Vermont law that requires an approval from the Commission before beginning site preparation or construction of:

- electric transmission facilities (e.g., a substation or large utility line),
- electric generation facilities (e.g., a power plant, or a solar or wind facility), and
- certain gas pipelines and associated infrastructure.

Section 248 also requires Commission approval for some long-term contracts for purchasing power from outside Vermont and for some investments in transmission and generation facilities outside Vermont.

This document is a summary of the procedural steps and opportunities for public participation when the Commission reviews a Section 248 case. Underlined text will link you to more information about that step in the glossary or to an external website.

*This document is a general guide for the public. It should not be relied upon for reviewing the applicable statutory and regulatory requirements for such projects. Every project is unique, and this general guide cannot anticipate or explain all issues that may arise in a case. For specific guidance, please refer to the applicable statutes, rules, legal precedent, and legal advice. Please feel free to contact the [Clerk of the Commission](#) if you have questions about the information in this document.*

*Not all steps in the flow chart will be conducted in every case. The order of steps can vary depending on the specific case.*

# 248 Process

## How to Participate.

There are two ways to participate in the 248 process: as a formal party to a case and as a member of the public.

- Parties may provide testimony and participate in evidentiary hearings. All parties must follow [the Commission's procedural rules](#), and are subject to the rules governing discovery and cross-examination. Commission proceedings are also governed by the Vermont Rules of Civil Procedure and the Vermont Rules of Evidence. A member of the public can request to be a party to a case, also referred to as intervention, and may be represented by an attorney or self-represented (also referred to as appearing "[pro se](#)").
- Members of the public may speak at public hearings and send the Commission written comments. They may attend scheduling conferences and evidentiary hearings to observe but they may not participate in the proceedings.

**Advance Notice.** At least 45 days before filing a [Section 248](#) petition with the Commission, an applicant must provide [advance notice](#) of the proposed project to the municipal and regional planning commissions and the municipal legislative bodies in the town where the project will be located. Comments on the project can be submitted to the Commission based on the information provided in the advance notice.

If the proposed project consists of relocating transmission facilities (i.e., power lines), then a 21-day advance notice is required.

**Filing a Petition.** When an applicant [files](#) a Section 248 application (also called a "petition") with the Commission, it must provide notice to the [adjoining landowners](#) that the application is being submitted to the Commission.

The petition filed with the Commission is accompanied by testimony and exhibits. The Commission (or a hearing officer assigned to the case) will review the petition for completeness and assign a case number. This case number should be included in all correspondence and questions regarding the case.

**Scheduling Conference.** The purpose of a [scheduling conference](#) is to discuss procedural details and to set the schedule leading to an evidentiary hearing and briefing in the case. Scheduling conferences are open to the public. After the scheduling conference, the Commission (or a hearing officer assigned to the case by the Commission) will issue an order summarizing the results of the scheduling conference, which generally includes a schedule for the next steps in the case ([scheduling conference order](#)).

**Site Visit.** The Commission (or a hearing officer assigned to the case by the Commission) may conduct one or more visits to the property where the proposed project is to be located. [Site visits](#) help the Commission and others to better understand the proposed project and the issues that the proposed project may present. Observations and facts from the site visit are not considered as evidence unless the Commission or a party specifically enters them into the evidentiary record.

**Public Comments and Public Hearing.** Members of the public can [file comments](#) in Section 248 proceedings before the Commission. [Public comments](#) can be submitted at any time in a Section 248 proceeding. However, public comments are most useful if they are submitted prior to the evidentiary hearing so that the Commission, hearing officer, and parties to the case can ask questions about issues raised in the comments. Additionally, if public comments are to be accompanied by a request to be a party to the case (see intervention, below), they must be submitted by the deadline for intervention established in the schedule for the proceeding.

In a Section 248 proceeding, the Commission (or a hearing officer assigned to the case by the Commission) may also hold a [public hearing](#) to provide members of the public an opportunity to comment on the case. (The Commission or a hearing officer will hold a public hearing if asked to do so by any party or member of the public.) The public hearing is typically held in the evening at a location in the town where a project is proposed. Comments at a public hearing (or written comments submitted at a different time) can serve to raise issues that the Commission and parties should consider during the case. However, because speakers at a public hearing are not commenting under oath and are not subject to cross-examination or questioning by the parties in the case, their testimony cannot be treated as evidence in the case.

Public hearings for Section 248 cases are announced on the Commission's website and published in local newspapers.

**Intervention.** A request to be a formal party to a 248 case, also referred to as [intervention](#), must be filed with the Commission within the time-frame indicated in the scheduling order that is issued following the scheduling conference. Often, this deadline is after the public hearing to provide an opportunity to learn about the project at the public hearing prior to deciding to request intervention. A request to intervene must be made by following standard procedures for filing a motion to intervene; for more information about these procedures, please see the explanation under [intervention](#) in the glossary.

**Discovery.** The [discovery](#) process takes place prior to an evidentiary hearing and allows the parties to the case to exchange information to get a better understanding of what facts they agree on and disagree about. Information produced in [discovery](#) is not evidence, unless the Commission (or a hearing officer assigned to the case by the Commission) admits it into evidence during the evidentiary hearing. Only the parties to the case are permitted to participate in discovery.

Parties to a case must follow standard procedures for discovery. For more information on these procedures, please see the explanation under discovery in the glossary.

**Testimony and Exhibits.** The parties to a case prepare [testimony](#) and [exhibits](#) that support their position on whether the proposed project complies with the Section 248 review criteria. The applicant includes prefiled testimony and exhibits with the application. The applicant may also file supplemental prefiled testimony to address issues that come up before the evidentiary hearing.

Other parties to a case have the opportunity to file testimony and exhibits prior to the evidentiary hearing. If filed, a party must provide a copy to all other parties in the case. The deadline for filing testimony and exhibits is usually set in the [scheduling conference order](#) issued after the scheduling conference.

**Evidentiary Hearing.** An [evidentiary hearing](#) will be convened for any Section 248 application about which contested issues remain or at the request of any party. While the public is welcome to attend and observe an evidentiary hearing, only the parties are permitted to participate. Members of the public can become active parties to a case by intervening following the process described above.

An evidentiary hearing may be conducted by the full Commission, two Commissioners, or a hearing officer.

Parties to a case must follow the procedures for evidentiary hearings; for more information about these procedures, please see the explanation under [evidentiary hearing](#) in the glossary.

**Stipulation or Memorandum of Understanding.** Two or more parties may agree to a settlement, also called a [stipulation](#) or [memorandum of understanding](#) (MOU), that resolves some or all of the disputed issues in a case. Settlements can be entered into at any point in a case and may be submitted to the Commission before or after the evidentiary hearing.

**Briefs.** The parties (and friends-of-the-court) will have an opportunity to file [briefs](#) after the evidentiary hearing. A brief is a written document that presents a party's legal and factual arguments for consideration by the Commission.

If you are not a party but would like an opportunity to tell the Commission how you think the evidence and law should be applied in the case, you can make a request to file a [friend-of-the-court](#) brief.

**Decision.** Once the evidentiary hearing is done and briefs have been filed, the Commission will issue a [decision](#) in the form of a final order. If an evidentiary hearing is held by a hearing officer, a [proposal for decision](#) will be issued by the hearing officer that recommends an outcome to the Commission. The parties to the case will have the opportunity to file written comments on the proposal for decision and ask for [oral argument](#) before the Commission.

The Commission will consider the hearing officer's proposal for decision, the parties' comments, and any arguments made at oral argument. The Commission may accept, reject, or modify the proposal for decision. In so doing, the Commission will issue a [final order](#) deciding the case. If the decision is to approve the project, the final order will be accompanied by a [certificate of public good](#).

If the evidentiary hearing is held by the Commission itself, no proposal for decision will be issued. Instead, the Commission will issue a final order following review of the parties' briefs.

Final Commission orders are subject to [motions for reconsideration](#) under the Rules of Civil Procedure. Any final decision by the Commission may be appealed to the Vermont Supreme Court.

Up-to-date information about specific cases, current deadlines, and more can be accessed anytime on the Commission [website](#).